

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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| Illinois Commerce Commission       | ) |         |
| On Its Own Motion                  | ) |         |
|                                    | ) |         |
| Investigation concerning           | ) | 01-0662 |
| Illinois Bell Telephone Company's  | ) |         |
| compliance with Section 271 of the | ) | Phase 2 |
| Telecommunications Act of 1996     | ) |         |

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**PROPOSED ORDER ON LIMITED ISSUES OF CIMCO COMMUNICATIONS, INC.**  
**AND FORTE COMMUNICATIONS, INC.**

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## **Introduction**

CIMCO Communications, Inc. (CIMCO) and Forte Communications, Inc. (Forte) documented deficiencies in SBC's OSS beyond the deficiencies documented by the BearingPoint and E&Y tests. Although these issues may not have been directly observed or tested by a pseudo CLEC, they are encountered by CLECs on a recurring basis. The OSS issues documented by CIMCO and Forte demonstrate that SBC's OSS impairs CLECs' ability to compete with SBC. The weight of the record evidence supports the conclusion that SBC has not demonstrated compliance with 47 USCS 271. CIMCO and Forte provide suggested language that the Commission should adopt in order to make clear that SBC must remedy the deficiencies in its OSS prior to receiving a positive 271 recommendation from this Commission.

### **I. Invalid Rejects**

Forte and CIMCO have each had recurring problems receiving invalid rejects on orders issued to SBC. Forte provided data on one common SBC invalid reject – "TN Invalid or Unavailable." Forte's initial affidavit documented 328 invalid SBC rejects for "TN Invalid or Unavailable" – an invalid reject rate of five percent.<sup>1</sup> In February of 2003, Forte received 14 invalid rejects for "TN invalid or unavailable." Forte was told in May of 2002 that this problem had been fixed, but Forte has received invalid rejects for "TN invalid or unavailable" every month since. In his Surrebuttal Affidavit, SBC witness Mr. Cottrell acknowledges that SBC's "fix" has not solved the problem and SBC "is investigating what

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<sup>1</sup> See Forte 1.0 at page 2. Within its Reply Affidavit, Forte updated its data for February of 2003.

appears to be another problem that is generating this error message.”<sup>2</sup> Forte proposes the following language to be adopted by the Commission’s Order in this proceeding:

When an order is invalidly rejected, it gets returned to the CLEC, even though the order should proceed through SBC’s systems. CLECs must then spend time and money to determine the cause of the reject, only to find out that the order was valid as originally sent. Forte has demonstrated that the invalid reject “TN Invalid or Unavailable” has yet to be fixed by SBC. SBC states that the error is related to Forte’s use of placeholders supported by SBC’s LSOG 4 EDI to populate its orders.<sup>3</sup> However, whether SBC’s invalid reject is the result of using “placeholders” in SBC’s LSOG 4 EDI does not negate the fact that it is SBC’s OSS that is causing these invalid rejects. In order to comply with Section 271 SBC must resolve the “TN Invalid or Unavailable” invalid reject.

CIMCO documented SBC invalid rejects beyond “TN invalid or unavailable”. CIMCO commonly receives invalid rejects for “TN invalid or unavailable”, “feature does not exist”, “account disconnected” and “more TNs on order than CSR”. As part of its Reply Affidavit, CIMCO provided data from September of 2002 to present approximately nine (9) percent of CIMCO’s various EDI switched service orders have been invalidly rejected by SBC.<sup>4</sup> While SBC states that SBC believes some of the orders were not invalidly rejected and 66 invalid rejects were for errors that have since been fixed, Mr. Cottrell does not provide a solution for the 25 undisputed invalid rejects for which SBC apparently does not have a fix. CIMCO proposes the following language to be adopted by the Commission’s Order in this proceeding:

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<sup>2</sup> Cottrell Surrebuttal Affidavit at ¶35.

<sup>3</sup> Id. at ¶36.

<sup>4</sup> Exhibit A from CIMCO’s Reply Affidavit showed 178 SBC invalid rejects from September 2002 to present out of 1,787 orders. Although some of the invalid rejects are less serious than others (for example, there are instances where SBC rejects an order only to accept it minutes or hours later), there are many instances where SBC rejects an order and then accepts it several days later (often seven to ten days later).

CIMCO's data, in conjunction with that provided by Forte, demonstrates that SBC's OSS does not have adequate ordering capability. Approximately nine percent of the time SBC invalidly rejects a CIMCO order that should be able to proceed through SBC's systems. SBC's inability to process orders correctly diminishes CLECs' ability to adequately serve customers and thus effectively compete with SBC. SBC has not demonstrated compliance with respect to its obligation to provide nondiscriminatory OSS.

## **II. Invalid USOCs / Invalid Prices**

Consistent with prior section 271 orders, a BOC must demonstrate that it provides CLECs with wholesale bills in a manner that gives carriers a meaningful opportunity to compete. Forte and other CLECs provided documentation of significant problems with SBC's wholesale billing. In particular, SBC invoices to Forte routinely contain altogether invalid USOCs or USOCs with invalid pricing. stated in his initial affidavit, since May of 2002 Forte has never received a bill that is accurate even to 10 percent of the tariffed rates. In 2002, Forte was over-billed hundreds of thousands of dollars on total annual sales of more than one million dollars. Forte has had the same billing errors repeated every month since it began providing service via UNE-P. With respect to Forte's billing issue, Mr. Silver states "SBC Illinois has taken the necessary steps to update its billing tables accordingly. The changes will be reflected in Forte's next billing cycle."<sup>5</sup> Forte proposes the following language to be adopted by the Commission's Order in this proceeding:

Although SBC has proposed to resolve the billing dispute between itself and Forte by the next billing cycle, it is too early to determine whether the remedy will in fact solve the dispute. The FCC has noted that Accurate and timely wholesale bills represent a crucial

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<sup>5</sup> Silver Surrebuttal Affidavit at ¶24.

component of OSS. The Commission will continue to monitor this situation in order to assess whether SBC brings its wholesaling billing within 271 compliance.

### **III. Invalid Formatting of Telephone Numbers (TNs)**

In its initial and reply affidavits, Forte described the problem of invalidly formatted telephone numbers (TNs). Forte commonly receives invalidly formatted TNs from SBC upon completion of a request for new residential or business POTS. SBC witness Mr. Cottrell acknowledged that BearingPoint encountered the TN problem as Observation 700. Mr. Cottrell further states “in order to correct this occurrence, on January 30, 2003, SBC Midwest made a change to the system used by its service representatives to enter these telephone numbers for transmission to CLECs to enforce the proper format.”<sup>6</sup> In his Surrebuttal Affidavit, Mr. Cottrell further stated “any lingering doubt that this problem is, in fact, fixed was eliminated by BearingPoint, who reported on February 25, 2003 that it had retested Observation 700 successfully.”<sup>7</sup> However, contrary to Mr. Cottrell’s blind faith in BearingPoint, Forte provided documentation (as Exhibit C to the Initial Phase II Brief of CIMCO and Forte) that it received 66 invalidly formatted TNs between January 29<sup>th</sup>, 2003 (the date Mr. Cottrell asserted SBC fixed the problem) and March 17, 2003. Since the time when SBC allegedly “fixed” the problem, 4.9% out of a total of 1341 completed orders for new lines contained invalidly formatted TNs. To date, SBC has still not solved this problem. SBC’s deficient OSS negatively affects Forte’s provisioning

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<sup>6</sup> Cottrell Rebuttal Affidavit at ¶67.

<sup>7</sup> Cottrell Surrebuttal Affidavit at ¶39.

and billing operations and fails to provide Forte the ability to effectively compete with SBC. Forte proposes the following language to be adopted by the Commission's Order in this proceeding:

Initially, SBC claims that invalidly formatted TNs are human error and are not relevant to SBC's OSS. That assumption is invalid. The real question is why SBC's OSS requires a manual input from one system to another. While SBC acknowledged the problem, it further asserted that BearingPoint Observation 700 addressed it and in fact solved the problem. Forte's data from the time of SBC's alleged "fix" to the middle of March proves that SBC's problem has not been fixed. The bottom line is that SBC's OSS should be able to provide correctly formatted TNs to wholesale customers. The fact that SBC's OSS is unable to provide correctly formatted TNs is further evidence that SBC's OSS does not provide CLECs the opportunity to compete on a level playing field with SBC.

#### **IV. Order Completions**

The performance measures that monitor SBC's ability to complete orders are mainly focused on the timeliness of SBC's order completion confirmation.<sup>8</sup> Beyond timeliness, there are numerous issues related to order confirmation that CIMCO consistently encounters as a result of Ameritech errors during the order completion phase. These are errors that would not necessarily be picked up by the BearingPoint and E&Y reports. SBC's poor handling of these orders requires a manual process even though this should be done on an electronic basis. Essentially, CIMCO is forced to review all CSRs to ensure the order was typed correctly on the CSR and, subsequently properly entered into the switch logic. This process is extremely burdensome and interferes with how CIMCO develops its systems to handle large volumes of orders. Moreover, SBC's errors

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<sup>8</sup> See Performance measures 7, 7.1, 8.

negatively impact CIMCO's customer's service through feature and service outages.

Primary Inter-exchange Carrier ("PIC") change requests are routinely processed incorrectly by SBC. When SBC receives such a request it should update the central office switch and corresponding customer service record (CSR). If SBC fails to process a PIC change request, subsequent change orders must be placed in order to update the switch and CSR. In other instances PIC change requests are updated on the CSR but not with the switch. If this happens, traffic continues to be routed to the previous carrier, causing customer dissatisfaction, inaccurate customer billing, and lost or delayed revenue for CIMCO. A final example of SBC order completion errors is when CIMCO submits a UNE-P order and SBC initiates an unnecessary and non-requested facility change (i.e. a ground start to loop start, that results in a customer outage).

In his Rebuttal Affidavit, SBC witness Mr. Cottrell states that BearingPoint's conclusion that SBC accurately provisioned switch features contradicts CIMCO's assertion that Primary Interexchange Carrier (PIC) change requests are routinely processed incorrectly. Mr. Cottrell incorrectly makes this assumption based on narrow BearingPoint testing. CIMCO proposes the following language to be adopted by the Commission's Order in this proceeding:

CIMCO specifically discussed deficiencies in SBC's OSS regarding SBC's improper processing of Primary Inter-exchange Carrier ("PIC") change requests. CIMCO further developed the discussion by providing examples of SBC's processing errors. SBC's only response was to point to a BearingPoint conclusion that SBC accurately provisioned switch features. SBC's observation, however, does not confirm whether SBC correctly processes PIC

change requests. Before the Commission can determine this issue, SBC show that its OSS correctly provisions PIC change requests.

## **V. Working Service Conflicts**

Forte's Initial and Reply Affidavits described the problem of SBC's untimely notice to Forte of a working service conflict (also called Worker in the Way) situation. As part of its Reply Affidavit, Forte documented data for February 2003 showing that out of 42 working service conflict faxes received from SBC, 90 percent were either for the wrong company, arrived after the due date, or arrived on the same day as the due date. SBC witness Mr. Brown addressed the working service conflict issue in his Surrebuttal Affidavit. Mr. Brown stated that an investigation determined that "some service representatives were 'batching' the faxes instead of sending them individually . . . [which delayed] the issuance of many WSC notices to or beyond the service due date."<sup>9</sup> To fix the problem SBC instructed its representatives to fax working service conflict forms to Forte every 15 minutes.<sup>10</sup> Forte has agreed to monitor the Worker-in-the-Way process and report results at the next CLEC user forum. Forte proposes the following language to be adopted by the Commission's Order in this proceeding:

It appears as if the working service conflict, as it pertains to Forte, has been addressed by SBC. It is, however, too early to determine whether the "fix" that SBC has proposed will in fact solve the problem. Forte and SBC agreed to monitor the problem until the next CLEC user forum. The Commission will not decide this issue until it is clear that the problem has been solved.

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<sup>9</sup> Brown Surrebuttal Affidavit at ¶9.

<sup>10</sup> Id.



## **VI. Invalid Completion Notices**

As part of its Initial and Reply Affidavits, Forte provided documentation that shows that approximately nine percent of the time Forte receives a completion notice from SBC only to find out that Forte's customer does not have dialtone. Forte showed that this greatly increases Forte's costs. Furthermore, in this situation SBC's OSS issues a completion notice prior to the customer receiving service. As a further result, SBC initiates billing too soon – before the customer even has dialtone.

In his Surrebuttal Affidavit, SBC witness Mr. Muhs points to PM 35 which tracks the percent of trouble reports that occur within 30 days of installation.<sup>11</sup> However, this isn't a trouble report situation in which the customer had service and then something went wrong, necessitating the filing of a trouble report. Here, the customer never had dialtone, but SBC nevertheless issued a completion notice. Mr. Muhs also points out that PM 35 is subject to a parity standard and further claims that Forte's percent trouble tickets that occur within 30 days of installation falls within the required parity performance for the time period. However, a parity standard is not an accurate measure for invalid completion notices. An invalid completion notice by SBC to a CLEC is much harder to remedy than an invalid completion notice by SBC to itself. CLECs must incur the additional truck roll and other expenses.

When SBC Retail works a trouble ticket for no dialtone with a retail account, the SBC technician can complete the work in one truck roll. However, a CLEC with the same problem must first go to the customer premise and

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<sup>11</sup> Muhs Surrebuttal Affidavit at ¶4.

diagnose that the problem is not an inside wiring problem but instead failure of SBC to provide dialtone at the network interface. Then the CLEC places a trouble ticket with SBC. Upon completion of repair, the CLEC must do a second truck roll to complete the cross connect. Thus, the CLEC performs two truck rolls as opposed to just one for SBC for the same problem. Although Forte has billed Ameritech \$71 for the additional truck rolls Forte has incurred, SBC has not paid Forte one dime for services and has notified Forte that SBC never ordered any repair work to be done by Forte. Forte proposes the following language to be adopted by the Commission's Order in this proceeding:

The Commission first notes that Forte documented that approximately 9 percent of the time, SBC issues an invalid completion notice for orders. Forte further demonstrated the added costs that result from SBC's error. SBC witness Mr. Muhs does not dispute these facts. However, Mr. Muhs points the Commission to PM 35 and its parity standard between wholesale and retail. Here, however, a parity standard does not measure whether Forte has an opportunity to compete because a fix to the problem requires much more for wholesale customers as compared to resale customers. The relatively simple fix for retail customers is simply not the case for wholesale customers. The Commission therefore requires SBC to develop the necessary improvements to its OSS in order to reduce the currently high frequency of invalid completion notices.

## **VII. Assume As Is / Assume As Specified**

CIMCO often converts retail and resale circuits to UNE-P without any changes in the existing specific services and encounters unnecessary obstacles from SBC's OSS systems. In LSOR 4.02, on an "Assume As Is" (which only apply to Centrex/Data/ISDN contracts), the Special Pricing Plan ("SPP")/("VTA") information is not necessary. However, SBC's LSOR5 requires the VTA field to

be populated, whether it is an “Assume As Is” or an “Assume As Specified”. If the VTA field is left blank, SBC will remove the contract and bill termination charges, not to CIMCO, but directly to the end user customer. This is an insidious process whereby a new CIMCO customer could unexpectedly be hit with a \$20,000 bill from SBC. SBC’s LSOG5 EDI takes a step backwards compared to its LSOG4.02. SBC’s change in process makes ordering more labor intensive and less efficient for CIMCO. Further, CIMCO is exposed to greater risk on SPPs. CIMCO proposes the following language to be adopted by the Commission’s Order in this proceeding:

This CIMCO issue involves SBC’s EDI version LSOG 5 compared to LSOG 4.02. CIMCO explained that SBC’s current EDI interface, LSOG 5, will remove a service contract and bill termination penalties if the VTA field is left blank. Moreover, the termination penalty does not go to the CLEC – the bill is sent directly to the CLEC’s end user customer. CLECs did not have this problem with SBC earlier EDI, LSOG 4.02. Due to the possibility of customers receiving an unexpected \$20,000 termination bill, the Commission believes SBC’s EDI must be improved. Further, SBC has the capability to make this update since its earlier EDI version did not have this flaw.

### **VIII. SBC’s “Compromise” Remedy Plan**

Although it is not an explicit requirement that a BOC be subject to a remedy plan mechanism for section 271 approval, the FCC has stated that the existence of a satisfactory remedy plan is probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.<sup>12</sup>

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<sup>12</sup> Ameritech Michigan Order, 12 FCC Rcd at 20748-50, ¶¶393-398.

Thus, the remedy plan must assure that SBC will not backslide if the ICC provides a positive recommendation to the FCC.

The Commission should not even be considering changes to the 01-0120 Remedy Plan. That plan was adopted last year after considerable effort on behalf of the Commission, SBC and interested parties. That plan created rights for CLECs and obligations by SBC that cannot be discarded with little evidence and no time to evaluate that evidence, simply because SBC claims that the 01-0120 plan is more stringent than other Bell Operating Company (“BOC”) Section 271 remedy plans. Based on the evidence carefully considered in 01-0120, this Commission found that this BOC needed incentives beyond those given by other Commission’s to their BOCs. SBC has done nothing since then to show that it can be trusted to behave properly without strict incentives. The Commission was correct then and would be correct now if it informs SBC that Section 271 approval will be withheld unless it commits to the Docket 01-0120 remedy plan.

Staff witness Ms. Patrick concluded that the “performance remedy plan offered by SBCI in this present proceeding would not sufficiently prevent backsliding in a post-271 approval environment.” Ms. Patrick further recommended that the Commission condition any positive 271 recommendation on SBC’s agreement to proceed with the ICC-approved 01-0120 Remedy Plan. Staff’s conclusion was further supported by the initial remedy plan affidavits of Forte<sup>13</sup> and CIMCO<sup>14</sup>.

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<sup>13</sup> Forte 1.1.

<sup>14</sup> CIMCO 1.1.

SBC's "compromise" remedy plan includes significant differences compared to the Commission-approved 01-0120 remedy plan:

- SBC has cut base payments by one half;
- SBC has eliminated priority levels, which may not be objectionable in itself, but unfortunately, the level of payment for all types of events and the per measure caps have been set at levels at the low end of the former payment scales, thus further minimizing the base payments;
- The "index value" component of the formula, which rewards SBC for improving overall performance, further lowers payments for individual events and for the overall cap;
- The "ceiling" in the plan eliminates payments where SBC's performance serving CLEC is below its performance for its own customers and affiliates if the performance exceeds an arbitrary level.

Forte and CIMCO further demonstrated that SBC's "compromise" plan would not be sufficient to compensate CLECs for poor SBC performance and would in fact encourage backsliding rather than prevent it. One of the purposes of a liquidated damages provision in a contract is to avoid the time and expense of litigating the amount of losses one party suffers when the other breaches a contract, particularly when such damages are often difficult to calculate in a precise manner. The remedy plan should offset costs CLECs incur when SBC fails to deliver the level of service to which they have previously agreed. Those costs include the salaries and benefits of personnel that must resubmit orders, follow-up with SBC on orders, track and report problems internally and to SBC, communicate with our customers on delays or generally spend time that would not have been spent if SBC had met its performance obligations. The base

amounts ordered by the 01-0120 remedy plan only partially mitigate CIMCO's and Forte's costs incurred from SBC's failures. It is therefore clear that the 01-0120 remedy plan base amounts should not be reduced by one-half. CIMCO and Forte propose the following language to be adopted by the Commission's Order in this proceeding:

The remedy plan adopted by the Commission must insure that SBC will not backslide if SBC sufficiently improves its OSS to warrant a positive recommendation from the ICC. The Commission thoroughly addressed the remedy plan as part of docket 01-0120. That plan created rights for CLECs and obligations by SBC that cannot be discarded with little evidence and no time to evaluate that evidence, simply because SBC claims that the 01-0120 plan is more stringent than other BOC Section 271 remedy plans. Based on the evidence carefully considered in 01-0120, the Commission developed the remedy plan necessary to provide incentive for SBC to improve its wholesale service quality. The Commission concludes that in conjunction with the required OSS improvements ordered herein, SBC must abide by the remedy plan adopted in docket 01-0120 before this commission will provide a positive recommendation to the FCC regarding Section 271 compliance.

**Conclusion**

CIMCO and Forte respectfully request that the Commission adopt the preceding proposed language on limited issues as part of the Final Order in this proceeding.

Respectfully submitted,

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